

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTONIO RENTARIA,

Petitioner,

vs.

MIKE MCDONALD, Warden,

Respondent.

No. C 11-2382 JSW (PR)

**ORDER TO SHOW CAUSE;  
GRANTING LEAVE TO PROCEED IN  
FORMA PAUPERIS**

(Docket No. 2)

**INTRODUCTION**

Petitioner, a prisoner of the State of California proceeding pro se, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his state court conviction. He has applied for leave to proceed in forma pauperis. This order directs Respondent to show cause why the petition should not be granted.

**BACKGROUND**

In 2007, Petitioner pled guilty in Sonoma County Superior Court to charges of driving under the influence and causing injury, driving without a license, fleeing the scene of a crime, as well as enhancements for causing great bodily injury and prior convictions for driving under the influence. The trial court sentenced him to a term of 12 years in state prison. Petitioner did not challenge his conviction or sentence on direct appeal, but rather filed habeas petitions in all three levels of the California courts. Petitioner then

1 filed the instant federal petition.

## 2 DISCUSSION

### 3 I Standard of Review

4 This court may entertain a petition for a writ of habeas corpus “in behalf of a  
5 person in custody pursuant to the judgment of a State court only on the ground that he is  
6 in custody in violation of the Constitution or laws or treaties of the United States.” 28  
7 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to  
8 show cause why the writ should not be granted, unless it appears from the application that  
9 the applicant or person detained is not entitled thereto.” *Id.* § 2243.

### 10 II Legal Claims

11 Petitioner claims: (1) that his guilty plea was not knowing and voluntary; (2) that  
12 he received ineffective assistance of trial counsel; and (3) that he received ineffective  
13 assistance of counsel on appeal. Liberally construed, these claims are sufficient to  
14 warrant a response from Respondent.

## 15 CONCLUSION

16 For the foregoing reasons and for good cause shown,

17 1. The Clerk shall serve by certified mail a copy of this order and the petition, and  
18 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General  
19 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

20 2. Respondent shall file with the Court and serve on Petitioner, within **ninety (90)**  
21 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
22 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
23 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all  
24 portions of the state trial record that have been transcribed previously and that are relevant  
25 to a determination of the issues presented by the petition. If Petitioner wishes to respond  
26 to the answer, he shall do so by filing a traverse with the Court and serving it on  
27 Respondent within **thirty (30)** days of the date the answer is filed.


1           3. Respondent may, within **ninety (90) days**, file a motion to dismiss on  
2 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to  
3 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,  
4 Petitioner shall file with the Court and serve on Respondent an opposition or statement of  
5 non-opposition within **thirty (30) days** of the date the motion is filed, and Respondent  
6 shall file with the Court and serve on Petitioner a reply within **fifteen (15) days** of the date  
7 any opposition is filed.

8           4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep  
9 the Court informed of any change of address by filing a separate paper captioned "Notice  
10 of Change of Address." He must comply with the Court's orders in a timely fashion.  
11 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
12 to Federal Rule of Civil Procedure 41(b).

13           5. In light of Petitioner's lack of funds, his application for leave to proceed in  
14 forma pauperis (docket number 2) is GRANTED.

15           IT IS SO ORDERED.

16           DATED: May 31, 2011

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18 JEFFREY S. WHITE  
19 United States District Judge  
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